Supreme Court, U. S.
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In the Supreme Court of the United States

No. 79-688

CITY OF PITTSBURGH, a Municipal Corporation, and JOSEPH L. COSETTI, Treasurer,
Respondents

vs.

ALLEN N. BRUNWASSER,
Petitioner

PETITION FOR WRIT OF CERTIORARI DIRECTED TO THE COMMONWEALTH COURT OF PENNSYLVANIA

ALLEN N. BRUNWASSER,
Petitioner

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IN THE SUPREME COURT OF THE UNITED STATES

CITY OF PITTSBURGH, a Municipal Corporation, and JOSEPH L. COSETTI, Treasurer,

Respondents

vs.

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Petitioner

PETITION FOR WRIT OF CERTIORARI DIRECTED TO THE COMMONWEALTH COURT OF PENNSYLVANIA

To the Honorable, the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Allen N. Brunwasser respectfully presents this petition for allowance of certiorari to the Commonwealth Court of the Commonwealth of Pennsylvania:

REFERENCE TO OFFICIAL AND UNOFFICIAL REPORTS OF THE OPINIONS DELIVERED IN THE COURTS BELOW

The June 6, 1977 adjudication of Allegheny County Common Pleas Court Judge I. Martin Wekselman has not been officially reported. A copy is appended to this petition (1a).

Judge Wekselman followed his opinion with an unreported decree nisi which has been attached to this petition (14a).

Judge Wekselman's June 8, 1977 order converting his June 6, 1977 decree nisi (this petition, 14a), into a preliminary injunction is unreported. A copy appears at 16a.

Judge Wekselman's September 8, 1977 opinion holding Petitioner in contempt for failure to obey his June 8, 1977 order (this petition, 16a), is unreported. A copy is reproduced at 38a.

The opinion of the Commonwealth Court of Pennsylvania has been reported at 396 A.2d 907, 40 Pa. Commonwealth Ct. 197. A copy thereof is appended to this petition (44a).

The August 6, 1979 order of the Supreme Court of Pennsylvania denying appeal is unreported. A copy is appended to this petition (48a).

JURISDICTION

Respondents' request for a preliminary injunction against Petitioner was granted by Judge Wekselman. Petitioner was adjudicated in contempt and incarcerated in the Allegheny County Jail because he refused to purge himself of this contempt. The Commonwealth Court of Pennsylvania affirmed. The Supreme Court of Pennsylvania denied appeal.

Jurisdiction to petition the United States Supreme Court for certiorari to the Commonwealth Court of Pennsylvania is founded upon 28 U.S.C. 1257 (3).

STATEMENT OF QUESTION PRESENTED FOR REVIEW

Do the 5th and 14th Amendments to the Constitution of the United States protect a lawyer against an adjudication of civil contempt to be enforced by incarceration when he refuses reasonably and in good faith to obey a preliminary injunction directing he file tax returns without including therein specific and detailed federal constitutional objections and to turn over his personal records and files to the tax collector who does not deny taxpayer's claim the information will be used for criminal prosecution plus politically motivated retaliation?

CONSTITUTIONAL PROVISIONS, STATUTES AND ORDINANCES INVOLVED

This petition involves the Fifth and Fourteenth Amendments to the Constitution of the United States which declare:

> "No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation." (Fifth Amendment)
>
> "Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." (Fourteenth Amendment)

CONCISE STATEMENT OF THE CASE CONTAINING THE FACTS MATERIAL TO THE CONSIDERATION OF THE QUESTION PRESENTED

On December 22, 1976, in the Court of Common Pleas of Allegheny County, Pennsylvania at G.D. 76-28-510, the City of Pittsburgh and its Treasurer, Joseph L. Cosetti (the Tax Collectors) filed a five count equity action against Allen N. Brunwasser (Taxpayer).

A. The first count (Complaint, paragraphs 1-15; A-32 to A-36)* wanted the Court to order Taxpayer produce his books, records and materials from 1970 to date so Pittsburgh earned income tax assessments could be made.

B. The second count (Complaint, paragraphs 16-19; A-36) asked Taxpayer be ordered to pay the tax.

C. The third count (Complaint, paragraphs 20-27; A-37 to A-38) claimed an inadequate legal remedy (Complaint, paragraph 27; A-38) because Taxpayer refused to file or pay business privilege taxes and asked he be directed to do so.

D. Count four (Complaint paragraphs 28-30; A-39) alleged inadequate legal remedy (Complaint, paragraph 30; A-30) because Taxpayer refused to expose his books, records and materials. It asked he be directed to do so.

* Unless otherwise indicated all "A" references are to the Appendix filed in the Commonwealth Court of Pennsylvania.

E. Count five (Complaint, paragraphs 31-35; A-39, A-40) requested Taxpayer be enjoined from legal action to prevent Respondent's tax collection activity.

Upon a December 22, 1976 Tax Collector ex parte request, the Court of Common Pleas of Allegheny County, Pennsylvania, Civil Division, I. Martin Wekselman, December, 1976 Motion Judge, set December 27, 1976 as the time for a hearing on the preliminary injunction request and took testimony on December 27 and December 28, 1976 (A-42) from Treasurer Cosetti (T. 27-161)** and Room 504 Courthouse Prothonotary Clerk, Francis Grzelka (T. 172; TA. 23).

On June 6, 1977, the lower Court entered a decree nisi (this petition, 14a) commanding Taxpayer file his returns, turn over his books, records and materials for assessment and pay it plus penalty and interest after assessment was made. The court refused Count V requested relief.

Taxpayer's June 7, 1977 protest (A-69) that the lower Court had no decree nisi authority resulted in a June 8, 1977 preliminary injunction (this petition, 16a) granting the same relief.

Taxpayer then filed a June 10, 1977 (A-92) protest against Judge Wekselman's June 8, 1977 order (A-89); filed a June 16, 1977 motion to revoke both the June 6 and June 8, 1977 decisions (A-106); filed a June 22, 1977 motion for reconsideration, all of which were re-

** The December 27, 1976 transcript is marked "T", the December 28, 1976 transcript is marked "TA", a subsequent contempt proceeding held September 6, 1977 is marked "BT", and the September 23, 1977 purge hearing is marked "CT".

fused on June 24, 1977 by Judge Wekselman without opinion (A-117).

Taxpayer took a timely appeal which was docketed in the Commonwealth Court of Pennsylvania at No. 19 T.D. 1977.

On July 14, 1977 (A-119), without averring it to be willful (A-119), Tax Collector asked Judge Wekselman to hold Taxpayer in contempt for failure to obey the June 8, 1977 order (A-89). A rule issued setting a hearing for September 6, 1977 at 9:00 a.m. (A-122).

On August 3, 1977, Taxpayer answered the rule (A-123), said he had filed his return and explained why he had not done everything the lower Court had ordered.

The petition for contempt and the answer thereto containing an excerpt from the tax return filed by Taxpayer has been reproduced in this petition at 18a-36a.

On September 6, 1977, after an evidentiary hearing (A-141), the lower Court held Taxpayer in contempt (the order is reproduced in this petition at 37a) but gave him until September 23, 1977 at 9:00 a.m. to purge himself.

Alarmed at the $500.00 per day fine request of the petition for contempt (see this petition, 19a), Taxpayer filed a criminal contempt appeal to the Supreme Court of Pennsylvania at No. 216 March Term, 1978. After being served with notice of appeal, Judge Wekselman filed a September 8, 1977 opinion (see this petition, 38a) saying the contempt was civil only.

This opinion (see this petition; paragraph 2, 39a) found Taxpayer's refusal to be "willfully" even though

the contempt petition did not allege it to be so and Taxpayer had explained his conduct at the contempt hearing (BT. 31-BT. 52; see also explanation filed with tax return and admitted into evidence, A-128; reproduced in this petition at 26a).

Taxpayer's petition for supersedeas was denied by the Supreme Court of Pennsylvania because he had not been sentenced. (See September 9, 1977 order of Mr. Justice Pomeroy, A-144).

On September 23, 1977 (see order reproduced in this petition, 42a) Judge Wekselman sent Taxpayer to the Allegheny County Jail until he obeyed.

The Supreme Court of Pennsylvania, sua sponte, moved up Taxpayer's No. 216 March Term, 1978 appeal for a September 30, 1977 argument without record or briefs and, after oral argument, released him on that day pending final disposition of the appeal.

The Commonwealth Court of Pennsylvania affirmed Judge Wekselman (see opinion, this petition 44a) and the Supreme Court of Pennsylvania denied appeal (see this petition, 40a).

At the evidentiary hearing held December 27, 1976 by Judge Wekselman, City Treasurer Joseph L. Cosetti spoke and complained against the tax returns filed by Taxpayer because they did not contain "numbers" (T. 28). He also admitted Taxpayer's agreement to give these numbers if Federal and State privileges against self-incrimination will be respected and the information not used to assess the business privilege tax (T. 32-35) which Taxpayer believes to be unconstitutional. Although the

Treasurer observed no net profits tax existed for the years 1973-1975 and that no claim was being made for those years (T. 42), Judge Wekselman still ordered Taxpayer to furnish information for those years, file returns and pay the tax (see June 6, 1977 decree nisi, paragraph 2, this petition, 14a) and jailed him for not doing it (see order of contempt and order of incarceration, this petition, 42a).

The lower Court refused interrogation about the unconstitutional application of the business privilege tax (T. 62-67) because it was not relevant (T. 62) even though Taxpayer wanted to show discriminatory enforcement and nonpayment by City lawyers, two of whom were identified (T. 63-67), and whether the Treasurer was behind an unsuccessful School Board criminal tax prosecution (T. 67-71) brought as a retaliation (T. 69) for Taxpayer's participation as a lawyer in favorite projects of the City's Mayor (massage parlor shutdown and unconstitutionality of the City Court) (T. 68) in order to show bias (T. 67), harassment (T. 68, 70), and ulterior motivation (T. 69) so that the lower Court could decide if it should apply the unclean hands doctrine (T. 69).

The lower Court simply did not want to hear about it (T. 68-69, 71), and found the Treasurer in good faith (T. 70) by blocking evidence to show he was not (T. 70, 68, 69, 71) and invited Taxpayer to appeal any error.

Taxpayer read (T. 74-75) a letter directed to Tax Agent Spence (A-145) into the record and followed up with a previous October 9, 1975 communication to Tax Supervisor Butler (T. 75-78) which offered to cooperate, file and pay the income tax if the information will not

be used for business privilege tax assessment (T. 76), turned over to unauthorized personnel (T. 76, 77), or used for criminal prosecution (T. 76), and offered to give him additional reasons if he made a visit to Taxpayer's office (T. 78) and to permit examination of his books and records and pay forthwith if given these assurances (T. 77).

The Treasurer based his refusal to permit payment of City and School tax returns unless they could be used for business privilege tax assessments (T. 83-86) because: "I will not offer you any special privileges" (T. 84).

The Treasurer admitted the criminal tax cases brought against Taxpayer by the School Board before the suit-added Magistrate were nol-prossed for reasons unknown to him (T. 123-125).

At the September 6, 1977 contempt proceeding, Tax Collector, speaking through Tax Supervisor Joseph Gabriellis, told the lower Court that Taxpayer had neither filed nor paid (BT. 31-33). Taxpayer then introduced into evidence the return filed August 2, 1977 with its explanation of Taxpayer's refusal to give numercial details (see reproduction of explanation, this petition, 26a).

The lower Court did not read this material (BT. 33) being content to say "I have no need for those" (BT. 36-37).

After offering into evidence his answer to the rule for contempt together with the explanation of his tax return attached (BT. 38) and stating that his defense was made in good faith (BT. 38-39), Taxpayer said he believed the City to be seeking information for the purpose

of criminal prosecution (BT. 39) similar to the previous unsuccessful school district proceeding (BT. 39-40) because of his participation as a lawyer opposing City (BT. 43) oriented litigation which he then detailed (BT. 40-41).

He asked the lower Court to recall his offer to file and pay if the information would be properly used (BT. 42), observed himself to be the only Taxpayer target of this type of proceeding (BT. 42), and concluded, "This is a political and personal prosecution" (BT. 41).

But the lower Court said (BT. 41), "I am not interested."

The lower Court concluded Taxpayer's offer to be sworn (BT. 44) and repeat what he had said was not necessary because, as a lawyer, he spoke as under oath (BT. 51).

Taxpayer's statement he believed his defense to be in good faith, that the information, if given, would be used "as a further harassment against me in order to break my will so that they can remove me as an advocate who opposes them" (BT. 45) fell on deaf ears (BT. 52).

At the September 23, 1977 purge hearing, Taxpayer told the lower Court that he had not complied with the order and that the posture of the case was identical to that of September 6, 1977 at which time he was ordered to jail until he obeyed (see order of commitment, this petition, 42a).

REASONS FOR ALLOWANCE OF THE WRIT

Do the 5th and 14th Amendments to the Constitution of the United States Protect a Lawyer Against an Adjudication of Civil Contempt To Be Enforced by Incarceration When He Refuses Reasonably and in Good Faith To Obey a Preliminary Injunction Directing He File Tax Returns Without Including Therein Specific and Detailed Federal Constitutional Objections and To Turn Over His Personal Records and Files to the Tax Collector Who Does Not Deny Taxpayer's Claim the Information Will Be Used for Criminal Prosecution Plus Politicially Motivated Retaliation?

A. Taxpayer-Petitioner respectfully suggests his past experience justified his fear the Tax Collector would use the material coerced by the Common Pleas Court orders for more than tax assessment (T. 67-71, 76; TA. 19-22; BT. 39-43, 45).

(1) Neither the Court nor any person on the City side of the case denied Taxpayer's fears were well-founded nor promised only proper use would be made of the material if the lower Court orders were obeyed.

(2) No Tax Collector witness denied Taxpayer's claim this case was a politically motivated retaliation to punish him for his role as opposing counsel in specifically identified cases (BT. 45, 40-41; see Tax Explanation, A-128, paragraph 2 D, E and F, A-130, 131, 132, 133-34;

paragraph 5, A-139; see this Petition, 28a-31a, 36a) offered in evidence (BT. 31).

B. *Maness v. Meyers,* 1975, 95 S.Ct. 584, 419 U.S. 449, is almost a factual and legal twin brother of this case.

There an attorney advised his client not to honor a subpoena duces tecum issued in a porno injunction proceeding.

The civil nature of the case, the City attorney promise not to use the material for criminal prosecution[1], the professed reluctance of the lower Court to jail an attorney, the refusal of the state appeal courts to intervene, and the rule that an order must be obeyed until overruled, did not prevent issue of federal habeas corpus to be United States Supreme Court approved.

The "substantial probability of self-incrimination" plus the good faith assertion of the privilege were held sufficient to bar a finding of contempt when an appeal return to the status quo previous to the order could never overcome exposure of the turned-over material (95 S.Ct. at 592, 419 U.S. at 460).

Concerned with the impact of the waiver doctrine (95 S.Ct. at 593, 419 U.S. at 462), the United States Supreme Court said the obey the order until overruled doctrine simply does not apply in the 5th Amendment area (95 S.Ct. at 592, 419 U.S. at 460) and approved the resist until appellate review idea of *U.S. v. Ryan,* 1971, 402 U.S. 530, 532-533, 91 S.Ct. 1580, 1582 (95 S.Ct. at 592, 419 U.S. at 460).

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[1] Here, Taxpayer received no such assurance.

Taxpayer relied on *Maness* and cited it in paragraph 3 of his answer to the rule (A-124; this petition, 22a) plus in paragraph 2F (A-133; this petition, 30a) and 2M (A-136; this petition, 33a) of his tax return explanation introduced into evidence (BT. 38).

C. Taxpayer also respectfully suggests his good faith reliance on the privilege against self-incrimination cases cited in his tax return explanation (A-128 to A-140; this petition 26a-36a) filed as part of his answer to the rule to show cause (A-123; this petition, 21a) and introduced into evidence (BT. 38) is sufficient to protect him from being held in contempt.

He relied then and now upon *U. S. v. Mandujano,* 1976, 96 S.Ct. 1768, 1777, 1779, fn. 8, 1780, 425 U.S. 564, 583; *U.S. v. Fensterwald,* D.C. Cir., decided March 8, 1977, 553 F.2d 231; *Bellis v. U.S.,* 1974, 417 U.S. 85, 87, 94 S.Ct. 2179, 2182; *Woods v. Dunlop,* 1975, 461 Pa. 35, 334 A.2d 619, 623, fn. 11; *Maness v. Meyers,* 1975, 95 S.Ct. 584, 592, 594, 419 U.S. 449, 460; *U. S. v. Murdock,* 1933, 290 U.S. 389, 396; *Grosso v. U.S.,* 1968, 88 S.Ct. 709, 390 U.S. 62; *Marchetti v. U. S.,* 1968, 88 S.Ct. 697, 704, 390 U.S. 39, 50; *U. S. v. Leary,* 1969, 89 S.Ct. 1532, 1537, 1539, 395 U.S. 6, 16; *Lower Merion Township v. Schenk,* decided April 19, 1977, 247 Pa. Superior Ct. 494, 496, 372 A.2d 934, 935; *Boyd v. U. S.,* 1886, 116 U.S. 616, 6 S.Ct. 524; *U. S. v. Sullivan,* 1927, 274 U.S. 269, 270; *U. S. v. Washington,* decided May 23, 1977, 97 S.Ct. 1814, 1820; *Morgan v. U. S.,* 340 U.S. 367, 370; *Schlesinger Petition,* 1951, 367 Pa. 476, 480, 81 A.2d 316, 319; *U. S. v. Laub,* 1967, 385 U.S. 475, 487, 87 S.Ct. 574, 581; *Gavin v. Unemployment Board of Review,* decided April 26, 1977, 29 Pa. Commonwealth

Ct. 634, 372 A.2d 495, 497; *City of Philadelphia v. Kenny,* 1977, 28 Pa. Commonwealth Ct. 531, 539, 369 A.2d 1343, 1348-1349; *U. S. v. Knox,* 1969, 396 U.S. 77, 82, 90 S.Ct. 366, 367; *Barker v. U. S.,* 1976, 424 U.S. 648, 681, 96 S.Ct. 1178, 1186.

D. Any possible vitality left to the argument that violation of a city ordinance is civil has been dissipated by Pennsylvania Rule of Criminal Procedure 3(1), effective September 1, 1977, which says:

> "Penal laws include all statutes and embodiments of the common law which establish, create or define crimes or offenses including any ordinances which may provide for imprisonment upon conviction or upon failure to pay a fine or penalty."

The Court is respectfully requested to examine *Com. v. Carter,* decided September 8, 1977, 36 Pa. Commonwealth Ct. 569, 574, 377 A.2d 831, 833 which distinguishes between an ordinance providing for imprisonment upon nonpayment of fine and declares it to be penal rather than civil in a case deciding the method and place of appeal.

Both the earned income plus the business privilege taxes provide for a daily $500.00 fine with imprisonment in default of payment and are thus clearly penal under Pa. R. Crim. Procedure 3(1).

E. Taxpayer also respectfully suggests his justified fears of ulterior motivation and use of the lower Court directed information for criminal proceedings and other harassment is protected by *U.S. v. Mandujano,* 1976, 96 S.Ct. 1768, 1777, 1779, fn. 8, 1780, cited in paragraph

2-D of his tax return explanation (A-130 to A-132), this petition 28a to 30a), and that the lower Court should have investigated as *U.S. v. Fensterwald,* DC Cir., decided March 8, 1977, 553 F.2d 231, provides.

He also respectfully suggests that punishment for any ulterior reason is barred and that the lower Court should have protected him against it. *Speiser v. Randall,* 357 U.S. 513, 518 (state denial of tax objection to suppress free speech unconstitutional violation of 5th Amendment due process); *Perry v. Sindermann,* 92 S.Ct. 2694, 408 U.S. 593; *Spies v. U.S.,* 1942, 317 U.S. 492, 495-496; *Simonsen v. Graquist,* 1961, 369 U.S. 38, 40; *Oestereich v. Selective Service System,* 1968, 393 U.S. 233, 237, 89 S.Ct. 414, 416 (abuse of law to punish dissident blocked); *Roncarelli v. Duplessis,* 1959, 16 DLR2d 689 (highest Canadian Judicial Court condemns denial of liquor license by prime minister and attorney general of Quebec to punish political dissenter); *Reisman v. Caplin,* 1964, 375 U.S. 440, 445, 84 S.Ct. 508, 511 (at IRS summons challenge hearing, agent must show legitimate purpose; taxpayer can attack on bad faith or improper purpose).

F. The lower Court was familiar with many of the above privileges against self-incrimination cases. They were mentioned in *Woods v. Dunlop,* 1975, 461 Pa. 35, 334 A.2d 619, where a previous contempt order of Judge Wekselman was upheld by a 4-3 decision.

Footnote 11 in that case cites *Maness,* supra, and *Bellis,* supra, is mentioned at 334 A.2d at 626, 461 Pa. at 51.

Taxpayer respectfully raised the above-cited cases. He believed then and believes now, and in good faith, that

they mean what they clearly say. He is truly disappointed that the Pennsylvania Courts deprived him of their protection.

G. Taxpayer respectfully suggests that his claims of unconstitutional retaliation and privilege against self-incrimination are well-founded.

(1) When and if Taxpayer files his returns, he will convict himself of 1971-1976 penal violations of the City of Pittsburgh earned income and business privilege tax plus the Pittsburgh School District income tax because he will admit all the elements necessary for a criminal charge of non-filing. See Section 9 of the Pittsburgh income tax,[2] Section 9 of the business privilege tax,[3] Section 10 of

[2] "Section 9. *Fine and Penalties*: Whoever makes any false or untrue statement on his return, or who refuses to permit inspection of the books, records or accounts of any business in his custody or control when the right to make such inspection by the Treasurer is requested, and whoever fails or, refuses to file a return required by this ordinance, shall, upon conviction before any alderman or magistrate, be sentenced to pay a fine of not more than three hundred dollars ($300.00) for each offense, and in default of payment of said fine, be imprisoned in Allegheny County Jail or Allegheny County Workhouse for a period not exceeding thirty (30) days for each offense."

[3] "Section 9. *Fine and Penalties*: Whoever makes any false or untrue statement on his return, or who refuses to permit inspection of the books, records or accounts of any business in his custody or control when the right to make such inspection by the Treasurer is requested, and whoever fails or refuses to file a return required by this ordinance, shall, upon conviction before any alderman or *district* magistrate, be sentenced to pay a fine of not more than *five hundred dollars ($500.00)* for each offense, and in default of payment of said fine, be imprisoned for a period not exceeding thirty (30) days for each offense."

1976 income tax amendment[4] and 24 PS of Pittsburgh School District income tax.[5]

[4] "Section 10. *Fines and Penalties for Violation of Ordinance.*

(a) Any person who fails, neglects or refuses to make any declaration return required by this Ordinance, any employer who fails, neglects, or refused to register or to pay the tax deducted from his employees, any person who refuses to permit the Treasurer or any agent designated by him to examine his books, records and papers, and any person who knowingly makes any incomplete, false, or fraudulent return, or attempts to do anything whatever to avoid the full disclosure of the amount of his net profits or earnings to avoid payment of the whole or any part of the tax imposed by this ordinance, shall upon conviction thereof before any alderman or magistrate, be sentenced to pay a fine of not more than five hundred dollars ($500.00) for each offense, and costs, and in default of payment of said fine to be imprisoned for a period not exceeding thirty (30) days.

(b) Any person who divulges any information which is confidential under the provisions of subsection (d) of Section 5 of this ordinance, shall, upon conviction thereof before any alderman or magistrate, be sentenced to pay a fine of not more than five hundred ($500.00) for each offense and costs, and in default of payment of said fine and costs to be imprisoned for a period not exceeding thirty (30) days.

(c) The penalties imposed under this section shall be in addition to any other penalty imposed by any other section of this Ordinance.

(d) The failure of any person to receive or procure the forms required for making the declaration or returns required by this Ordinance shall not excuse him from making such declaration or return."

[5] "(c) Any person who wilfully fails or refuses to file any return containing the information required by this act shall be guilty of a misdemeanor, and upon conviction thereof, shall be sentenced to pay a fine of not more than five hundred dollars

(2) He will open himself up to the false statement penalties of these enactments regardless of whether or not he is truthful because of the desire of the tax collector to put him in his place.

(3) All returns, 1971-1976, can be used to reinforce each other in these prosecutions.

(4) Taxpayer's fears of political and criminal retaliation have never been denied by tax collector people. As a result, he respectfully suggests, especially in light of what has gone on up to today, that his concern about harassment and criminal prosecution is well-founded.

(5) No other American Court, so far as taxpayer's research has disclosed, has ever ordered an individual lawyer to file tax returns and turn over his books, records and files to the tax collector.

(a) *U.S. v. Sullivan,* 1927, 274 U.S. 269, 270, gives a taxpayer the right to claim the privilege against self-incrimination or any other objection on his return. In fact, failure to do so is a waiver. See discussion in *U.S. v. Washington,* decided May 23, 1977, 97 S.Ct. 1814, 1820 (disclosure without claim of privilege is waived; *Gardner v. U.S.* discussed and distinguished).

(b) Taxpayer respectfully believes the *Grosso* and *Marchetti* line of cases discussed at page 7a of the lower Court opinion (discussed at page 7a of the Opinion, Brief, p. 7a, see this petition, 6a-7a) as inapplicable, are really applicable because his claim to be in a class of one (BT

($500), or to undergo imprisonment for not more than six (6) months, or both. The Act of June 20, 1947, P.L. 733, §15; May 12, 1949, P.L. 1246, §1." (24 P.S. 581.15(c))

42) is supported by his experiences in this case (T. 62-69); TA. 5-6, 19-20; BT. 37-42).

Taxpayer does not presume to have the power of being "the final arbiter" or "judge" (see lower Court opinion, this petition, 7a) of the merits of his claim. He does in good faith believe that his experience with the tax collector justifies his refusal to supply ammunition for further and future attack against him.

(c) Taxpayer cannot understand the lower Court's (opinion, see this petition, 7a) rejection of *Gardner.* This case clearly says, 424 U.S. at 657, 96 S.Ct. at 1184, that failure to claim the privilege on the return is a waiver which permits the information to be used in a criminal prosecution.

This is the very thing taxpayer is attempting to avoid.

(d) The page 9 lower court conclusion (this petition, 8a) that the City legislation is civil has been clearly rejected by the September 1, 1977 amendment of Pennsylvania Rule of Criminal Procedure 3(1) (see this petition, page 16, supra), the decision of the Superior Court of Pennsylvania in *Lower Merion Township v. Schenk,* decided April 19, 1977, 247 Pa. Superior Ct. 494, 496, 372 A.2d 934, 935, the distinguishing decision of the Commonwealth Court of Pennsylvania in *Philadelphia v. Kenny,* decided February 23, 1977, 28 Pa. Commonwealth Ct. 531, 539, 369 A.2d 1343, 1348-1349 (privilege against self-incrimination available in civil proceeding) and *Forbes Neighborhood Association v. Pittsburgh,* decided September 8, 1977, 31 Pa. Commonwealth Ct. 517, 519, 377 A.2d 830, 833 (jail if fine not paid equals criminal proceeding).

(e) Taxpayer respectfully suggests the production of books and records cases relied upon by the lower Court are simply non-supportive of its decision.

(1) *Shapiro v. U.S.*, 1947, 335 U.S. 1, is a unique 5-4 decision requiring a war-time price control licensee to turn over his books and records.

Since licensing of attorneys is within the exclusive power of the Pennsylvania Supreme Court (see preamble to Rule of Disciplinary Enforcement 17)[6] and not the City of Pittsburgh, neither the Pittsburgh income nor business privilege tax is a licensing privilege to which *Shapiro* could apply.

The lower Court admits as much (see this petition, 11) and Taxpayer respectfully avers *Shapiro* is inapposite.

(2) *Davis v. U.S.*, 328 U.S. 582, involved a consent search for illegal gas coupons during World War II rationing and has no application here.

In fact, it is authority for Taxpayer when it says, 328 U.S. at 589, that private papers were not seizable, citing *U.S. v. Boyd,* 1886, 116 U.S. 616, 6 S.Ct. 524 at page 590, fn. 1.

(3) *Com. v. England,* 1976, 74 D. & C. 2d 489, involved a writ directed against three corporations and a third party accountant to produce tax returns of an under-investigation individual.

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[6] "The Supreme Court declares that it has inherent and exclusive power to supervise the conduct of attorneys who are its officers." See also Rule 6-16 setting forth procedure for admission of attorneys. *In Re Shigon*, 1974, 462 Pa. 1, 12, 329 A.2d 235, 240 fn. 14.

Depositions were taken under Pa. R.C.P. 209 and the Court observed, 74 D. & C. 2d at 491, the specific provisions of 72 P.S. 1609 and 7301 authorized the action in which the target was a witness but not himself the subject of the investigation, 74 D. & C. 2d at 492.

Here, the Taxpayer is not a non-privilege against self-incrimination holding corporation, see *Wilson v. U.S.*, 1911, 221 U.S. 361, and is himself the target of investigation. Since *England* made analogy to the procedure of 26 U.S.C. 7602 Internal Revenue summons enforcement, the case is actually authority for Taxpayer.

(6) Taxpayer respectfully suggests and urges this Honorable Court to find that the privilege against self-incrimination is still a viable force within the meaning of the 5th and 14th Amendments to the Constitution of the U.S. and that his experiences to date clearly justified his decision to use it as a blockgate against further harassment. *Ballmann v. Fagin,* 1906, 200 U.S. 186, 26 S.Ct. 212 (refusal to produce cash book on claim of privilege against self-incrimination approved). See also cases collected and discussion in *Fisher v. United States,* 1976, 425 U.S. 391, 96 S.Ct. 1569.

Taxpayer respectfully urges this Honorable Court to declare that his 5 1/2 days in jail are excellent evidence of his good faith and sincere belief the cases on which he relied are still good law which would, in the end, protect him.

CONCLUSION

Petitioner respectfully requests the Supreme Court of the United States to grant certiorari directed to the Commonwealth Court of the Commonwealth of Pennsylvania.

Respectfully submitted,

ALLEN N. BRUNWASSER,
Petitioner

APPENDIX

IN THE COURT OF COMMON PLEAS OF
ALLEGHENY COUNTY, PENNSYLVANIA
CIVIL DIVISION

No. GD 76-28510
In Equity

CITY OF PITTSBURGH, a municipal corporation, and
JOSEPH L. COSETTI, Treasurer

v.

ALLEN BRUNWASSER

No. GD 76-28380
In Equity

ALLEN N. BRUNWASSER

v.

GRACE S. HARRIS and THE CITY OF PITTSBURGH,
a municipal corporation

ADJUDICATION

I. Martin Wekselman, Chancellor, June 6, 1977

The above-captioned complaints in equity were consolidated by order of court because they raise similar issues of law and fact, and are essentially the obverse of

each other. For reasons of simplicity and clarity, this court will first consider the cause of action at No. GD 76-28510 and then consider the preliminary objections of defendants at No. GD 76-28380.

The Complaint in equity at No. GD 76-28510 is brought by the City of Pittsburgh and its treasurer, Joseph L. Cosetti, to compel defendant, Allen N. Brunwasser, to file full and complete business privilege tax returns for the years 1971 to the present, and to compel the payment of said taxes together with penalties, interest, and costs. In addition thereto, plaintiffs have requested this court to compel the defendant to produce all books, records, and business materials necessary for the city treasurer to audit defendant's business privilege tax returns, or, in the alternative, to determine their own assessments of his tax liability for the specified years. Finally, plaintiffs request this court to enjoin defendant from instituting all legal actions against public officials, employees, and other agents designed to prevent them from pursuing their official duties.

The City of Pittsburgh, pursuant to authority granted to it under the Local Tax Enabling Act, Act of 1965, December 31, P.L. 1257 et seq., as amended, 53 P.S. §6901 et seq., imposes a tax on the gross receipts earned from businesses, professions, and other activities conducted by residents of the City or on gross receipts earned by businesses, professions and other activities conducted within the City. Ordinance No. 675 of 1968, as amended by Ordinance Nos. 594 of 1970 and 1 of 1975. In addition thereto, the City of Pittsburgh imposes an earned income tax annually at the rate of 1% on the net profits of businesses and professions. Ordinance No. 567, as amended

by Ordinances Nos. 591 and 839. It is uncontested that defendant Brunwasser was and continues to be employed in the profession of law in the City of Pittsburgh during the period in question, and that defendant has repeatedly refused to file his city income tax return or a business privilege tax return as required under the Ordinances. Defendant's refusal to file his city income tax return or to pay the city school taxes is rooted in his undying conviction that such returns will be utilized for the purpose of assessing the business privilege tax, which defendant claims is patently unconstitutional.

Since this court has limitations on its time and resources, it cannot recite in detail the bizarre, complex, and interminable series of events out of which these suits arose. Suffice it to say, that the plaintiffs have been chasing (at times literally) the defendant for six years now in an effort to compel him to file and pay his taxes.* The plaintiffs' request for injunctive relief is predicated upon its assertion that all other legal and administrative efforts have been pursued by plaintiffs to no avail, and that defendant continues to defy the ordinances in question and is, therefore, the proper subject of injunctive relief.

Injunctive Relief

The continuous violation of a valid municipal ordinance has been held by our courts to be the proper subject of injunctive relief. *See, Pa. P.U.C. v. Israel,* 356 Pa. 400, 52 A.2d 317 (1947); *Hilltown Twp. v. Mager,* 6 Commonwealth Ct. 90, 293 A.2d 631 (1972); *City of Pittsburgh v. Maya of Market Square,* Court of Common

* Defendant admits to having been arrested several times for tax evasion in violation of the School Code.

Pleas of Allegheny County at No. GD 76-18161, February 23, 1977. Where, as here, the legislative body has declared certain conduct to be unlawful, that is equivalent to calling it harmful to the public interest, and the continuous engagement in such unlawful conduct constitutes immediate and irreparable harm. See, *Pa. P.U.C. v. Israel, supra,* at 406.

Having determined that injunctive relief will lie under the circumstances of this case, it remains for this court to decide if defendant Brunwasser has any valid defenses to the payment of either his earned income tax, his city school taxes, or the business privilege tax. Since defendant's refusal to file or pay his earned income tax and city school tax is predicated solely upon his contention that these returns will be improperly utilized to assess the business privilege tax, this court will first consider the validity of such use by the plaintiffs and then turn to the question of the constitutionality of Ordinance No. 675.

Validity of Assessment Procedures

First, defendant contends that the assessment procedures employed by the City to determine the business privilege tax are invalid and an abuse of discretion by the City's auditing department. The record herein is totally devoid of any facts which would indicate a finding of impropriety on the part of the plaintiffs, beyond the bald assertion by defendant that such is the case. In making a tax assessment, an auditor may employ a variety of methods of valuation and, without a showing to the contrary, the law will presume he did so fairly and legitimately. *Philadelphia v. Litvin,* 211 Pa. Superior Ct. 204, 235 A.2d 157 (1967).

Defendant also relies on the confidentiality provision of the School Code, 1961, Aug. 24, P.L. 1135, No. 508, §5, 24 P.S. 588.5(d) which reads:

> "Any information gained by the treasurer, his agents, or by any other official or agent of the school district imposing a tax under this act, as a result of any declarations, returns, investigations, hearings or verifications required or authorized by this act, shall be confidential except for official purposes and except in accordance with a proper judicial order or as otherwise provided by law."

Defendant argues that the school treasurer will turn over the information gleaned from his school tax return to the city treasurer for assessment of the disputed business privilege tax in violation of the confidentiality provision of the School Code. Not only is this mere conjecture on the part of defendant, but it totally ignores the exceptions noted in that provision which permit the use of information for official purposes or in response to a judicial decree.

Defendant's Constitutional Claims

Defendant contends that Section 5 of the Business Privilege Tax which requires the filing of a completed return is violative of his privilege against self-incrimination as guaranteed by the Fifth Amendment of the United States Constitution and Art. I, §9, of the Pennsylvania Constitution. Defendant asserts that the requirement of filing a completed return will automatically subject him to criminal penalties and compel him to give evidence against himself in violation of his Fifth Amendment privilege. This court is somewhat baffled by the circuitous reasoning of defendant and, upon closer examination, the fallacious logic of defendant becomes quite apparent. The

Ordinance does not require the defendant to confess liability to the fine or failure to pay the tax, for at the time defendant is required to file his return he is not admitting a past delinquency. Therefore, Section 5 of the Business Privilege Tax is not unconstitutional on its face for no compulsory self-incrimination attaches at the time of filing. In addition, Section 5 is merely an administrative and regulatory procedure necessary for the exercise of a legitimate governmental purpose—the assessment and collection of revenue. *U.S. v. Sullivan,* 274 U.S. 259 (1927). Defendant's "Catch 22" form of reasoning has been consistently rejected by both state and federal courts as creating an impossible situation wherein the privilege automatically attaches upon the failure of a citizen properly to file his tax returns, thereby subjecting the citizen to penalties under the ordinance for his admitted delinquency. *U.S. v. Sullivan, supra; Philadelphia v. Cline,* 158 Pa. Superior Ct. 179 (1945).

Nor are Sections 5 and 9 * of the Business Privilege Tax similar to the wagering tax statutes in dispute in *Marchetti v. U.S.,* 390 U.S. 39 (1967), or *Grosso v. U.S.,* 390 U.S. 62 (1967). In *Marchetti* and *Grosso,* the court held that since submitting a claim of privilege in lieu of the requisite returns would also incriminate, the privilege could be exercised by merely failing to file a return. The rationale of the court's holding was predicated on the structure and purpose of the gambling excise and occupational tax. The court recognized that the requirement to file under a *gambling* excise tax was likely to produce incriminating statements which would automatically be turned over to law enforcement personnel. Unlike *Marchetti* and *Grosso,* the obligation to file a tax return under the disputed ordinances does not create any *real* threat of self-incrimination. Clearly, the tax forms and requirements under the ordinances are neutral on their face and directed at the public at large. *See, Albertson v. S.A.C.B.,* 328 U.S. 70 (1965). It has long been held that where the governmental objective in requiring information is found to be neutral and regulatory in nature, and where the threat of incrimination is merely imaginary and trifling, the privilege does not apply. *Marchetti, supra,* at 53. To hold otherwise would be an unwarranted extension of the scope of the Fifth Amendment, would be contrary to the purposes of that Amendment, and would create the anomalous situation of making the individual taxpayer the final arbiter of the merits of his claim. The Fifth Amendment was never intended to cast each taxpayer in the role of judge, particularly under a self-assessment system of taxation. If defendant would not have incriminated himself by the filing of his tax returns, then the Fifth Amendment cannot be used to justify his failure to do so. *Marchetti,* at 48.

At oral argument, defendant laid great stress on a recent Supreme Court case, *Garner v. U.S.,* 44 U.S.L.W. 4323 (Mar. 23, 1976). Defendant's reliance on *Garner* is totally misplaced as that case involved the issue of waiver of one's Fifth Amendment rights in a collateral criminal proceeding. Defendant *Garner* was prosecuted for violating certain Federal gambling statutes and objected to the introduction of his 1040 tax returns on which he had specified his occupation as "gambler". The court held defendant's failure to claim the privilege upon the filing of his return precluded him from raising this objection at a later, nontax-related prosecution. In fact, the

* Penalty provision under the ordinance.

court specifically rejected defendant's claim that disclosures on an income tax return are "compelled" within the meaning of the Fifth Amendment. The court declared: "Unless the Government seeks testimony that will subject its maker to criminal liability, the constitutional right to remain silent absent immunity does not arise." *Garner, supra,* at 4326.

Defendant also cites a recent Superior Court decision in support of his position that the privilege against self-incrimination applies to civil tax proceedings. *City of Philadelphia v. Kenny,* Pa. Superior Ct. , 369 A.2d 1343 (1977). On the contrary, a careful reading of *Kenny* indicates that where a penalty which is primarily remedial in character is imposed by the legislative body, then the Fifth Amendment privilege *does not* apply, *Kenny, supra,* at 1348. As in *Kenny,* the penalty sought under Sections 5 and 9 of the ordinance is designed to protect the City in the collection and assessment of taxes and to reimburse it for expenses incurred in investigating, litigating, and collecting the taxes of those citizens who either fail or refuse to pay. The sanctions imposed are clearly intended by the City as a civil incident of the assessment and collection of the City Business Privilege Tax, and, therefore, the Fifth Amendment privilege does not apply. *See Kenny, supra,* at 1349.

This court pauses to note that defendant's constitutional challenge as a defense to the present action completely ignores the long recognized rule that requires exhaustion of administrative remedies. While the present action is in equity and may fall within the exception to that rule, this court does not condone the obvious evasive procedures employed by the defendant. Defendant's tactics completely bypass the adequate remedy at law provided in the ordinance, and raise serious doubt as to the good faith of defendant's position.

In addition to his Fifth Amendment claims, defendant contests the validity of the Business Privilege Tax on the theory that he is being denied Equal Protection of the Laws as guaranteed by the Fourteenth Amendment to the United States Constitution. Defendant's claim is that the City taxes some attorneys while ignoring others, namely those who are "on the public dole." Specifically, defendant contends that members of the City's law department are not required to pay the business privilege tax, even though they frequently carry on a private practice in addition to their status as city solicitors. Defendant introduced absolutely *no* evidence in support of this allegation beyond an oral diatribe before the court.

The Pennsylvania Constitution, Art. VIII, §1, requires that taxes be uniform upon the same class of subjects, and they are considered to be uniform if they fall equally on all within the class. The soundness of a classification scheme which distinguishes employees or wage earners from business or professional persons has been upheld by our courts on numerous occasions. See, *Dole v. Philadelphia,* 337 Pa. 375 (1940). The test of uniformity has been defined in *F. J. Busse Co. v. Pittsburgh,* 443 Pa. 349, 279 A.2d 14 (1971), to be "whether there is a reasonable distinction and difference between the classes of taxpayers sufficient to justify different tax treatment." *Supra,* at 358. Defendant has failed completely to carry his burden of proving the unreasonableness of the tax classification scheme. *Wanamaker v. Philadelphia Sch. Dist.,* 441 Pa. 567 (1971). Consistent with a long line of Pennsylvania cases in this area, this

court determines that the classification scheme in question is a just, equitable, and reasonable exercise of the City's taxing powers under the Enabling Act. *See, Farmington Twp. Sch. Dist. v. Yeskey,* 409 Pa. 12 (1962); *Dole v. Philadelphia, supra; Philadelphia v. Cline,* 158 Pa. Superior Ct. 179 (1945); *Philadelphia v. Schaler,* 148 Pa. Superior Ct. 276 (1942).

Collateral Estoppel

Plaintiffs also contend that defendant Brunwasser is collaterally estopped in the present action from challenging his liability under the Business Privilege Tax because of a default judgment entered against him at No. 1582 of 1971, Court of Common Pleas of Allegheny County. Apparently, in 1970, plaintiffs made a jeopardy assessment of defendant's Business Privilege Tax based upon his earned income tax returns of the preceding year and filed suit in assumpsit for the 1969 and 1970 business privilege taxes then owing. At No. 1462 C.D. 1973 (November 19, 1974), Commonwealth Court affirmed a refusal by Judge McLean to open that judgment.

This court concludes that the default judgment entered on the 1969 and 1970 taxes is res judicata as to any defenses which were or could have been raised in the former proceeding between the same parties, and cannot be relitigated in the present proceeding. It is well settled in the law of Pennsylvania that a default judgment is conclusive upon the parties to the action, *Roberts v. Gibson,* 214 Pa. Superior Ct. 229 (1969), and any defenses which were or could have been raised are thereby merged with the judgment below.

However, plaintiff's contention that the default judgment at No. 1582 of 1971 is determinative of defendant's

liability for subsequent tax years is unpersuasive and must be rejected by this court. The doctrine of collateral estoppel is narrowly construed, and it is not apparent from this record that the defenses now raised by the defendant were issues of fact or law which were fully litigated below. The refusal of the court below to open the default judgment could have been determined on issues apart from any meritorious defenses raised by the plaintiff; e.g., petitioner's failure to file his motion to open in timely fashion. For this reason, the court cannot determine with assurance that the defenses now raised by the defendant were fully and fairly litigated at a prior proceeding between the parties. *See, Larsen v. Larsen,* 392 Pa. 609 (1958).

Production of Books and Records

Defendant's contention that his Fifth Amendment privilege extends to the production of books and records as requested by plaintiffs herein is totally without merit. That issue was litigated and determined in *Shapiro v. U.S.*, 335 U.S. 1 (1947), which held that one cannot properly claim the protection of the privilege as to records and books which he is required by administrative regulations to preserve. This is commonly referred to as the "required records doctrine," and is rooted in the notion that the privilege against self-incrimination is a *personal* privilege which attaches to the person of the defendant, and not his records or other business documents. See also, *Davis v. U.S.*, 328 U.S. 582 (1946); *Commonwealth v. England,* 74 D. & C. 2d 489 (1976).

Preemption by State

Defendant finally contends that the Business Privilege Tax is an invalid attempt by the City to regulate his

practice of law, an area already preempted by the State. This contention was decided in *Freeman v. Philadelphia,* 178 Pa. Superior Ct. 290 (1955), where the court held that revenue raising ordinances such as the one in question are not imposed to permit one to exercise one's profession or occupation, but, rather, are levied on the *privilege* of practicing it.

Penalties, Costs & Interest

In addition to this court's determination that defendant can properly be compelled to produce his books and business records, and can be enjoined from refusing to file completed income tax returns and business privilege tax returns for the years in question, it is also properly within the court's jurisdiction to impose penalties, costs, and interest pursuant to Ordinances Nos. 675 and 567. While this court is mindful of the fact that a taxpayer's default because of a bona fide contest would act to exonerate the taxpayer from liability under the penalty portions of the ordinance, *Dole v. Philadelphia, supra,* at 384, the factual circumstances surrounding the instant action do not warrant such a finding. Here, defendant had ample opportunity properly to challenge the validity of the Business Privilege Tax, and to avail himself of the administrative procedures for contest under the ordinance. Instead, defendant has chosen to pursue the matter through his own "judicially ordained" procedures, ignoring both the spirit and letter of the law. Not only has defendant Brunwasser set himself up as both judge and jury on his constitutional claims, but he had instituted a series of vexatious suits to harass the plaintiffs and discourage them from pursuing their legislatively mandated duties. For these reasons, this court finds that defendant Brunwasser's

challenge of the ordinance in question was not a bona fide challenge, but one permeated with bad faith and ill dealing in light of the other available legal and administrative remedies.

Enjoining Defendant From Filing Suit

This court is sorely tempted to enjoin the defendant from filing suits against public officials who are merely enforcing the tax ordinances; however, such a remedy would be too broad in scope and constitute an infringement of the defendant's rights as guaranteed by the First Amendment of the Constitution. The Supreme Court has long recognized that the protections of the First Amendment extend beyond a narrow, literal reading of freedom of speech, petition, and assembly. The court has recognized the value of litigation as being ofttimes the most effective forum for the vindication of political rights and expressions. *NAACP v. Button,* 371 U.S. 415 (1963). In light of the presumption in favor of protected First Amendment activities, and plaintiffs' failure to demonstrate a compelling state interest in enjoining defendant from filing suit, this court must deny that aspect of the relief requested.

* * * * * * * *

IN THE COURT OF COMMON PLEAS OF
ALLEGHENY COUNTY PENNSYLVANIA
CIVIL DIVISION

No. GD 76-28510
In Equity

CITY OF PITTSBURGH, a municipal corporation, and
JOSEPH L. COSETTI, Treasurer

v.

ALLEN BRUNWASSER

DECREE NISI

AND NOW, to-wit, this 6 day of June, 1977, IT IS ORDERED, ADJUDGED AND DECREED THAT:

1. Plaintiffs' prayer for relief in the nature of an injunction requiring the defendant to file within thirty (30) days full and complete business privilege tax returns for the years 1971, 1972, 1973, 1974, 1975 and 1976, is hereby granted.

2. Plaintiffs' prayer for relief in the nature of an injunction requiring the defendant to file within thirty (30) days full and complete earned income tax returns for the years 1971, 1972, 1973, 1974, 1975 and 1976, is hereby granted.

3. Plaintiffs' prayer for relief in the nature of an injunction requiring the defendant to pay all delinquent

earned income taxes and business privilege taxes, together with penalties, interest and costs, is hereby granted.

4. Plaintiffs' prayer for relief in the nature of an injunction requiring the defendant to produce, within sixty (60) days of the filing of the above-mentioned returns, all business records and books necessary for the City Treasurer and/or his agents to audit defendant's business privilege tax and earned income tax returns, is hereby granted.

5. Plaintiffs' prayer for relief in the nature of an injunction enjoining the defendant from instituting legal actions against plaintiffs and other public officials and employees is hereby denied.

6. The Prothonotary is hereby directed to give notice of the entry of this Decree Nisi to counsel for all parties of record and, if no exceptions are filed within twenty (20) days, to enter this Decree Nisi as a Final Decree, upon praecipe duly filed.

(s) I. Martin Wekselman
Chancellor

IN THE COURT OF COMMON PLEAS OF
ALLEGHENY COUNTY, PENNSYLVANIA
CIVIL DIVISION

No. G.D. 76-28510
In Equity

CITY OF PITTSBURGH, a municipal corporation, and
JOSEPH L. COSETTI, Treasurer

vs.

ALLEN BRUNWASSER

ORDER OF COURT

AND NOW, to-wit, this 8th day of June, 1977, it appearing to the court that the court was operating under a mistake of fact in that the court was under the impression that the parties hereto had agreed to proceed as though on final hearing when, in fact, no such agreement existed and the parties contemplated only a hearing on plaintiffs' motion for preliminary injunction.

IT IS ORDERED, ADJUDGED AND DECREED that the Adjudication and Decree Nisi heretofore filed on June 6, 1977, are amended to be an Opinion and Order of Court, and that the first four paragraphs of the Decree Nisi be and the same hereby are to be considered a preliminary injunction enjoining defendant to take the actions

and perform in accordance with the provisions of those paragraphs, and that paragraphs 5 and 6 of the Decree Nisi be stricken.

BY THE COURT,
(s) Wekselman,
J.

IN THE COURT OF COMMON PLEAS OF
ALLEGHENY COUNTY, PENNSYLVANIA
CIVIL DIVISION

No. GD 76-28510

CITY OF PITTSBURGH, a municipal corporation, and
JOSEPH L. COSETTI, Treasurer,

Plaintiff

v.

ALLEN BRUNWASSER,

Defendant

PETITION TO SHOW CAUSE WHY DEFENDANT SHOULD NOT BE HELD IN CONTEMPT OF COURT

AND NOW COMES the City of Pittsburgh by its undersigned counsel and respectfully avers as follows:

1. On or about December 21, 1977, plaintiffs filed a Complaint in Equity requesting a preliminary and permanent injunction requiring inter alia, defendant Brunwasser to file and pay all taxes owing to the City of Pittsburgh.

2. On June 6, 1977, this court entered an Adjudication and Decree Nisi (Exhibit A) ordering inter alia, defendant, Allen Brunwasser, to:

(a) file within thirty (30) days [from this Court's Order] full and complete earned income tax returns for the years 1971, 1972, 1973, 1974, 1975 and 1976; and,

(b) to file within thirty (30) days [from this Court's Order] full and complete earned income tax returns for the years 1971, 1972, 1973, 1974, 1975 and 1976; and,

(c) to pay all delinquent earned income taxes and business privilege taxes, together with penalties, interest and costs.

3. On June 8, 1977, this Court issued a subsequent order changing the decree of June 6, 1977 from a Decree Nisi to a Preliminary Injunction. (Exhibit B)

4. No returns or payment of taxes have been filed or made by defendant Brunwasser within the thirty (30) days time limit prescribed by this Court.

WHEREFORE, it is respectfully requested that defendant Brunwasser:

(a) be held in contempt of this Court's Order dated June 6, as modified by the Order of June 8, 1977, and that;

(b) defendant Brunwasser be fined $500.00 per day for each and every day he is in violation of this Court's orders; and,

(c) defendant Brunwasser be incarcerated in the County Jail until he files said returns and pays taxes plus interest and penalty due and owing; and,

Petition
Rule

(d) any other relief this Court deems necessary and appropriate.

Respectfully submitted,
(s) D. R. Pellegrini
D. R. PELLEGRINI
Assistant City Solicitor

(s) Mead J. Mulvihill, Jr.
MEAD J. MULVIHILL, JR.
City Solicitor

(Affidavit Omitted)

[Caption Omitted]

RULE

AND NOW, to wit, this 14 day of July, 1977, upon consideration of the within Petition, and upon motion of counsel for plaintiffs, this Court grants a Rule upon defendant to show cause why he should not be punished for contempt of court because of his failure to specifically comply with and carry out the provisions of the injunction entered herein.

Rule Returnable August 4, 1977 and hearing set for 6 day of September, 1977 at 9:00 o'clock, Courtroom No. 4, City-County Building.

BY THE COURT
(s) Wekselman
J.

Answer to Rule and Motion

IN THE COURT OF COMMON PLEAS OF
ALLEGHENY COUNTY, PENNSYLVANIA
CIVIL DIVISION

No. G.D. 76-28510

CITY OF PITTSBURGH, a municipal corporation, and JOSEPH L. COSETTI, Treasurer,
Plaintiffs

vs.

ALLEN N. BRUNWASSER,
Defendant

ANSWER TO RULE TO SHOW CAUSE

Defendant respectfully answers the rule to show cause entered July 14, 1977 as follows:

1. The enclosed protest against filing a tax return, turning over records and paying said tax is incorporated by reference as defense to the rule for contempt.

2. All pleadings in protest to the Order filed after the Order of June 6 and June 8, 1977 were entered are incorporated as defenses. This would include the pleading filed June 7, 1977, the brief filed March 10, 1977, the pleading filed June 17, 1977, the pleading filed June 15, 1977 and the pleading filed June 9, 1977.

3. Defendant is not in wilful non-compliance with any Order of Court. He respectfully and honestly and in good faith believes, for the reasons set forth above, that the Order was improper. He has filed an orderly appeal which is presently docketed in the Commonwealth Court of Pennsylvania at No. 19 TD 77 and this is the only manner by which he can protest. In the event he turns over the information, a reversal will not correct the situation. *Maness v. Myers,* 1975, 95 S.Ct. 584, 592 (doctrine of waiver and turning over information permits pre-compliance appeal).

4. Treasurer Cosetti is barred from holding the public office of Treasurer under Article 6, Section 2 of the Pennsylvania Constitution as he is Lieutenant Colonel in the United States Army Reserve and therefore he is an improper plaintiff in this case.

5. The motion filed by plaintiff to obtain the rule does not set forth sufficient jurisdictional facts in that it does not allege that defendant's non-compliance was wilful and/or without any cause. This being so, it is respectfully suggested the Court had no jurisdiction to entertain the petition and no jurisdiction to enter the rule and will have no jurisdiction to make any finding of contempt.

6. Since plaintiff is requesting a $500.00 per day fine plus imprisonment defendant respectfully invokes the 6th and 14th Amendments to the Constitution of the United States and demands a jury trial and also respectfully invokes Article 1, Section 9 of the Pennsylvania Constitution plus Article 1, Section 6 of the Pennsylvania Constitution and the procedural protections of 17 PS 2047 and 2048 and requests a jury trial at which trial Judge Wekselman will not preside.

WHEREFORE, defendant respectfully requests that the rule be discharged.

Respectfully submitted,
Allen N. Brunwasser
Attorney for Defendant

MOTION TO RECUSE JUDGE I. MARTIN WEKSELMAN

To the Honorable, the Judges of Said Court:

The motion of Allen N. Brunwasser respectfully represents:

1. That he is defendant above in a proceeding for criminal contempt.

2. That he respectfully has invoked the provisions of 17 PS 2047 and 2048 and the right to a jury trial and as permitted by those provisions respectfully requests that Judge I. Martin Wekselman recuse.

3. That for all the reasons set forth in Exhibit A, the reasons protesting the filing of any tax return, petitioner respectfully requests that Judge Wekselman recuse.

4. That Judge Wekselman is a political ally of Joseph L. Cosetti because he was on the republican ticket in the primary election as a judicial candidate and Mr. Cosetti was the candidate for Mayor on the republican ticket and, therefore, Judge Wekselman should not sit in

a case presented to him by a political ally in a primary and now a general election because Judge Wekselman and Treasurer Cosetti are respectively the republican candidate for Judge and the republican candidate for Mayor in the November, 1977 general election.

5. All motions to recuse which motions were filed subsequent to the June 6, 1977 opinion, are incorporated by reference into the present motion.

6. The motion which was served upon petitioner was not the same motion that was presented to the Court. The testimony which has been obtained clearly indicates that the petition presented to the Court on July 17, 1977 was changed from that served on defendant and, therefore, proper notice was not given within the meaning of the 5th, 6th and 14th Amendments to the U.S. Constitution and Article 1, Sections 1, 9 and 25 of the Pennsylvania Constitution. Additionally, Judge Wekselman was sitting in the Family Division and not in the Civil Division and was not Motion Judge and had no right to entertain any motion on July 14, 1977. *Smith v. Gallagher,* 1962, 408 Pa. 551, 185 A.2d 135.

7. Because of various violations of the election code, Judge Wekselman has forfeit his right to hold public office within the meaning of 25 PS 3551. The details of this have been set forth in Exhibit A and additional details and facts will be presented in the event the Court requests an evidentiary hearing. Defendant-petitioner does not desire to put any more on record than is necessary at this point because he realizes the danger of taking any issue with a judicial official when he is a mere member of the bar.

WHEREFORE, petitioner respectfully requests that Judge I. Martin Wekselman recuse from any further proceedings in this case and also revoke his Order of July 14, 1977.

Respectfully submitted,

(s) Allen N. Brunwasser

Allen N. Brunwasser

Attorney for Defendant-Petitioner

(Affidavit Omitted)

EXPLANATION OF FAILURE TO GIVE ARITHMETIC IN 1971-1976 CITY WAGE TAX, SCHOOL TAX AND BUSINESS PRIVILEGE TAX RETURNS

1. I am filing the returns only because I am a member of the bar and believe that I should make an attempt to comply with the Order signed by Judge I. Martin Wekselman in the Court of Common Pleas of Allegheny County, Pennsylvania at No. G.D. 76-28380 and G.D. 76-28510. This would include the Order of June 6, June 8 and the rule for contempt signed June 14, 1977. In filing this material, I do so only under the compulsion of said Orders, in order to avoid an adjudication of contempt and with reservation and non-waiver of any rights set forth below and any rights which I may not set forth below but which are unknown to me. I call upon the members of the City Law Department to advise me in the event I have any rights of which I am not asserting and I make this call under Code of Professional Responsibility of the American Bar Association plus the requirement that government counsel advise an opponent of any remedies or rights he may have.

2. I respectfully refuse to give any information in the good faith and honest belief that the following reasons give me an absolute right to do what I am doing. I honestly believe in good faith that the following material is an absolute blockade to any requirement that I file the arithmetic and details involved in the returns:

A. City people with authority to act have refused to promise that the material in my return would not be protected from public scrutiny and also have refused to

promise that the arithmetic in the City and School Wage Taxes would not be used to assess the Business Privilege Tax. In fact, I asked City Treasurer Joseph L. Cosetti, on December 27, 1976, in the Courtroom of Judge Wekselman if he would agree to permit me to file proper returns on the City and School Taxes and pay the tax the next day and give me a promise that this material and payment would not be used to assess Business Privilege Tax. He refused and this is a matter of Court record in the testimony of said hearing.

As a result, I respectfully invoke the confidentiality provisions of the Pittsburgh School Code, 24 PS 588.5(d) and 24 PS 588.10(b), the provisions of the City Code, 53 PS 6913(f) and IX(b) and Section 5(d) of the 1976 Pittsburgh Wage Tax and any and all confidentiality provisions of the City and School Wage Tax and Business Privilege Tax of the City of Pittsburgh.

B. I believe that the Business Privilege Tax has unconstitutionally classifed members of the Bar so that those on the public payroll or from whom any deduction is withheld for taxes are not required to pay the Business Privilege Tax and their partners and associates are not required to pay on any share they receive from the person from whom tax is withheld. I believe this is an unequal discrimination within the meaning of the 14th Amendment to the Constitution of the United States and Article 8, Section 1 of the Pennsylvania Constitution. I have additional reasons why this tax is unconstitutional but I am not raising them in this tax form except as set forth supra.

C. Turning over my books and records would violate the attorney-client privilege as defined by Canon 4 of

the ABA Canons of Professional Responsibility, State Statute 17 PS 321, The Judicial Code of 1976 if and when it becomes law and in particular Section 5916 and 5928. See *Bellis v. U.S.*, 1974, 417 U.S. 85, 98, 94 S.Ct. 2179, 2188, Fn. 9.

D. I have been the subject of discrimination and personal harassment by the City and School taxing authorities. I would submit the following as examples of a non-complete list:

(1) I participated in opposition to the closing of Massage Parlors in the City of Pittsburgh which closing was a project of City Government. See generally G.D. 76-18161.

(2) I attempted to shut down so-called City Court as being unconstitutional in violation of the separation of powers doctrine of the Federal and State Constitutions. One of the many cases filed is G.D. 77-01314.

(3) I was counsel for the moving party in a case filed in the United States District Court for the Western District of Pennsylvania at Civil Action No. 72-1114 which action attempted to enjoin then Mayor Peter Flaherty and various police officers for illegal and unconstitutional conduct. The case terminated with a December 17, 1975 order by United States District Judge William Knox, in which order defendants promised the conduct complained about would stop.

(4) I appeared in Washington, D.C. to oppose the confirmation of Mayor Flaherty as Deputy Attorney General. At the suggestion of Senator Orin Hatch, I withdrew my objections when he promised the Mayor would change his previous conduct after appointment.

(5) I opposed the candidacy of City Treasurer Joseph L. Cosetti, at which time the present problems began again. See G.D. 77-11611 on appeal at No. 153 March Term 1977 in the Supreme Court and G.D. 77-09940 also on appeal in the Supreme Court.

(6) I also filed an action to terminate the illegal and unconstitutional functioning of the so-called City Tax Court on the third floor of the City-County Building. See G.D. 75-22679.

(7) I participated as one of the lawyers in opposition to the closing down of Massage Parlors. See generally G.D. 76-18161.

(8) I have filed an action at G.D. 77-16349 to oust Mayor Richard S. Caliguiri from his office as Mayor and Councilman of the City of Pittsburgh.

Mayor Caliguiri and Treasurer Cosetti, according to statements in the media, are friends and will protect the employment of each other. As a result, I believe that the present litigation and the attempts to have me expose my books and file various tax returns is not in good faith but as a cover up of a secret policy to use this material to put me in serious difficulty even if the difficulty is not justified at law. *U.S. v. Mandujano,* 1976, 96 S.Ct. 1768, 1777, 1779, Fn. 8, 1780. Additionally, the conduct of City people is issuing levy after levy all contrary to law is detailed at G.D. 76-28380.

As a result, I do not believe that the litigation to force me to turn over financial records and file returns is in good faith but only to obtain material to put me in additional difficulty as a chosen target of City government. As a result, I do not believe it would be good judgment to file any returns or turn over any records or pay any tax

because I believe this information will be used to persecute me and harass me.

I respectfully request discovery in this area within the thinking of *U.S. v. Fensterwald,* D.C. Cir., March 8, 1977, 553 F.2d 231 and intend to request the Supreme Court to grant this discovery.

E. Because of what I have alleged in the preceding paragraph, I believe that I am in a special target group and therefore I should not be required to file any return or turn over any records or pay any tax because this material will illegally be used to put me in difficulty. I thus would respectfully assert the privilege against self-incrimination as defined by the 5th and 14th Amendments to the Constitution of the United States and Article 1, Section 9 of the Pennsylvania Constitution. See generally *Grosso v. U.S.,* 1968, 88 S.Ct. 709, 390 U.S. 62; *Marchetti v. U.S.,* 1968, 88 S.Ct. 697, 704, 390 U.S. 39, 50; *U.S. v. Leary,* 1969, 89 S.Ct. 1532, 1537, 1539, 395 U.S. 6, 16.

F. No Judge has any authority to direct a sole practicing attorney to turn over his books and records. I respectfully assert the 5th and 14th Amendments to the Constitution of the United States and Article 1, Section 9 against this directive. *Bellis v. U.S.,* 1974, 417 U.S. 85, 87, 94 S.Ct. 2179, 2182; *Woods v. Dunlop,* 1975, 461 Pa. 35, 334 A.2d 619, 623, Fn. 11; *Manness v. Meyers,* 1975, 95 S.Ct. 584, 592, 594; *U.S. v. Murdock,* 1933, 290 U.S. 389, 396.

I ask that you take judicial notice that although the Business Privilege Tax and the City Wage Tax are defined as summary conviction matters that the School Tax is a misdemeanor, the Pennsylvania Income Tax is a misdemeanor and the Federal Tax is a felony. In light of the treatment that I have received so far I am fearful that the material will be improperly used and will be a "link" or a "real danger" to me. I do not believe that the people in charge of the tax requests are acting in good faith and may look for something which will cause me criminal difficulty. This does not mean I am guilty of any crime but that I may be prosecuted regardless. As an example, I ask you to take judicial notice that the City Law Department, according to D. R. Pellegrini, First Assistant City Solicitor, encouraged the School Solicitor to bring four bogus criminal actions against me for misdemeanor violation of the School Income Tax. All four charges were dismissed but only after substantial inconvenience, concern and harassment suffered by me.

I believe the identical thing will happen again. For example, in the event I admit I have filed no tax and have income, this admission alone will subject me to criminal prosecution. Additionally, I ask you to examine the broad violations in the Business Privilege Tax and City Wage Tax all of which would justify numerous types of criminal prosecutions for all kinds of alleged derelictions and also the similar provisions in the School Wage Tax.

Thus, in the event I turn over my records and file these returns and pay the tax or do any of them, I will be in serious jeopardy according to my good faith opinion regardless of whether I would be convicted.

G. Violation of a City Ordinance which permits imprisonment in the event a fine is not paid is a crime. *Lower Merion Township v. Schenk,* decided April 19, 1977, Pa. Super. , 372 A.2d 934, 935 relying on criminal rule 67 and 3(i), (f) and (k). See 53 PS 58304.

The City Wage Tax permits 30 days imprisonment if a $500.00 fine is not paid.

Additionally, the fines can be multiplied for each and every dereliction. The Business Privilege Tax in Section 9 permits an additional fine and imprisonment in default.

H. I incorporate by reference reasons for not filing and in opposition to the order requiring me to file, pay and turn over records:

(1) A pleading filed at G.D. 76-28510 on June 7, 1977.

(2) A brief filed at G.D. 76-28510 on March 10, 1977.

(3) A pleading filed June 17, 1977 at G.D. 76-28510.

(4) A pleading filed June 15, 1977 at G.D. 76-28510.

(5) A pleading filed on June 9, 1977 at G.D. 76-28510.

I. I believe that the legal proceedings brought by the City are a violation of Article 1, Section 26 of the Pennsylvania Constitution in that I am being prosecuted and oppressed for exercise of my civil rights set forth supra. The 5th and 14th Amendment would also apply.

J. Richard S. Caliguiri who voted for the various ordinances and is now the Mayor of the City of Pittsburgh was not a proper councilman in 1975 and 1976 and not a proper Mayor in 1977. As a result, any vote would be unconstitutional and thus the Business Privilege Taxes and the Wage Taxes controlling the years 1976 and 1977 would be illegal. See generally case filed at G.D. 77-16349 for details. Additionally, any vote by Councilman

Lucchino, Stone and Lynch would be similarly illegal in the event they did not make the disclosures which are discussed in the suit against Mayor Caliguiri at G.D. 77-16349. Thus, the Wage and Business Privilege Taxes for 1976 and 1977 are illegal and unconstitutional.

K. My individual records are protected from any order requiring me to turn them over and I am not required to file any tax return. *Boyd v. U.S.*, 1886, 116 U.S. 616, 6 S.Ct. 1524. I believe in good faith and honestly that the return I am filing is sufficient within the meaning of *U.S. v. Sullivan,* 1927, 274 U.S. 269, 270; *U.S. v. Washington,* decided May 23, 1977, 97 S.Ct. 1814, 1820.

L. I believe that filing the return, turning over my records and paying the tax under the circumstances of this case would be a violation of privacy within the meaning of the 1st, 5th, 9th and 14th Amendments to the U.S. Constitution and Article 1, Sections 1, 9 and 25 of the Pennsylvania Constitution. *Bellis, supra,* 417 U.S. at 91, 94 S.Ct. at 2185.

M. I am fearful that giving any information may be a waiver of the above rights and therefore I must take an absolute position of non-disclosure. *Morgan v. U.S.,* 340 U.S. 367, 370, 373; *Maness, supra,* 95 S.Ct. at 594.

N. The Order of Judge Wekselman is an illegal search warrant without probable cause in violation of the 4th and 14th Amendments to the U.S. Constitution and Article 1, Section 8 of the Pennsylvania Constitution.

O. The cases on appeal in the Commonwealth Court at No. 19 TD 1977 and the Court should await the outcome of appeal litigation.

P. I honestly and in good faith believe that Judge Wekselman had no authority to direct I do what I am do-

ing and I am resisting this in good faith. *Schlessinger Petition,* 1951, 367 Pa. 476, 480.

Q. Ann Nelson, the Law Clerk to Judge Wekselman, contributed money to his recent primary campaign all in direct violation of the Code of Judicial Responsibility and in direct violation of the thinking of the Pennsylvania Supreme Court. See No. 3788 and 3794 Misc., No. 405, No. 21 Misc. which opinions were filed in an opinion by the Chief Justice on July 1, 1977 and the letter from Court Administrator Barbieri dated May 7, 1976 indicating that Law Clerks cannot participate in politics. See footnote 3 of the Opinion and footnote 4 referring to March 18, 1977 communication covering Law Clerks. I personally observed Ann Nelson in Court and in Chambers participating in the case and therefore the Order, in which she functioned, is contrary to the above law and should be revoked. Ann Nelson's $50.00 donation was given March 18, 1977.

R. Any return can be used to build a case for any other year in regard to any other tax and therefore old returns can be used to bring prosecutions and persecutions up to the present time and in the future and therefore the law cited supra would apply to them.

S. The Court had no jurisdiction to do what it did because the doctrine of primary jurisdiction requires administrative remedies be first exhausted. See discussion in *Commonwealth Department of Environmental Resources v. Bethlehem Steel Corp.,* decided January 3, 1977, Pa. , 367 A.2d 222, 230 and Fn. 28.

T. Sections 5 and 6 of the Pittsburgh Wage Tax and Sections 7 and 8 of the Business Privilege Tax give no authority to go into equity and therefore the City people

were operating beyond their jurisdiction in bringing the litigation in the first place. *U.S. v. Larionoff,* 1977, 97 S.Ct. 2150, 2156, Fn. 12.

U. Since no injunction was requested, the Court reached issues not before it. See *Com. v. Hughes,* 1976, Pa. , 364 A.2d 306, 309. This material is also discussed in the pleadings already filed in the equity case.

V. Judge Wekselman had no right to sit as a Judge because of election violations. A proceeding will be filed in the Supreme Court for an adjudication in this area. Since Judge Wekselman could not function as a Judge, his Order is without jurisdiction and void. See 25 PS 3551. Judge Wekselman took campaign contributions from a stenographer and his law clerk, took campaign contributions from professional corporations, borrowed money from Mellon Bank, took money from firms and took money from lawyers who appeared before him in cases some of which were then not yet decided. The details of this which will be presented to the Supreme Court shortly, are incorporated retroactively into this objection.

W. On December 27 and 28, 1976, Judge Wekselman was a judicial candidate on the republican ticket and Joseph L. Cosetti was the republican candidate for Mayor in the City primary election. As a result, Judge Wekselman should not have received any litigation in which Treasurer Cosetti was the party because they were political allies. *Buckley v. Valeo,* 1976, 424 U.S. 1, 22, 96 S.Ct. 612, 636.

3. In regard to any payment of any tax due, I respectfully assert the right of recoupment and counterclaim because of the improper conduct of the City against me

including false arrest. See general discussion in *Maslan v. Bachman,* 1977, Pa. , 374 A.2d 517.

4. I am also a member of the bar sworn to uphold the Federal and State Constitutions. I respectfully, honestly and in good faith believe I would be derelict in my oath and in violation of it in the event I would obey the June 6 and June 8 Orders of Judge Wekselman.

5. I respectfully, honestly and in good faith believe the above authority and reasons are an absolute bar to any requirement that I file any more complete tax return than I have. I have relied on the above authority and on the authority below in making my decision. *U.S. v. Laub,* 1967, 385 U.S. 475, 487, 87 S.Ct. 574, 581.

A. I have an absolute right to protest what I believe to be unjust law in a proper court. *Gavin v. Unemployment Board of Review,* decided April 26, 1977, Commonwealth , 372 A.2d 495, 497.

B. Even under the old law, which classified the Philadelphia Wage Tax as civil, the privilege against self-incrimination protected the taxpayer especially in an action in assumpsit requiring payment of fines for non-payment. *City of Philadelphia v. Kenny,* 1977, Commonwealth , 369 A.2d 1343, 1348-1349.

C. No one can be required to file a return with government if it will form a link to possible criminal charges regardless of guilt. *U.S. v. Knox,* 1969, 396 U.S. 77, 90 S.Ct. 366, 367; *Barker v. U.S.,* 1976, 424 U.S. 648, , 96 S.Ct. 1178, 1186.

Respectfully submitted,
(s) Allen N. Brunwasser
Allen N. Brunwasser

IN THE COURT OF COMMON PLEAS OF
ALLEGHENY COUNTY PENNSYLVANIA
CIVIL DIVISION

No. G.D. 76-28510
In Equity

CITY OF PITTSBURGH, a municipal corporation, and
JOSEPH L. COSETTI, Treasurer
v.
ALLEN N. BRUNWASSER

ORDER OF COURT

AND NOW, to-wit, this 6th day of September, 1977, after hearing in open court, the rule to show cause why respondent, Allen N. Brunwasser, should not be held in contempt of court, is made absolute and respondent is adjudged to be in contempt of this court's Order of June 8, 1977.

Imposition of sanctions for contempt is continued to September 23, 1977, at 9:00 a.m., in order that respondent may have an opportunity to purge himself of contempt by compliance with this court's Order of June 8, 1977, or, in the alternative, to agree to and comply with the conditions stated on the record by the Court for the grant of a supersedeas from this Court's Order of June 8, 1977.

BY THE COURT,
(s) WEKSELMAN,
J.

IN THE COURT OF COMMON PLEAS OF
ALLEGHENY COUNTY, PENNSYLVANIA
CIVIL DIVISION

No. G.D. 76-28510
In Equity

CITY OF PITTSBURGH, a municipal corporation, and
JOSEPH L. COSETTI, Treasurer

v.

ALLEN N. BRUNWASSER

OPINION

Wekselman, J. September 8, 1977

Respondent Allen N. Brunwasser having served the Court with a Notice of Appeal, the Court now, in conformity with the Rules of Appellate Procedure, sets forth its reasons for the Order appealed from.

On June 8, 1977, the Court entered a preliminary injunction requiring respondent, Allen N. Brunwasser, to take the actions therein set forth within 30 days. On the expiration of that period of time, Brunwasser having failed to comply with the Order of Court, the City filed a petition for rule to show cause why Brunwasser should not be held in contempt of Court. The Court, after hearing, issued a rule returnable 20 days subsequent thereto and set a hearing on the matter for September 6, 1977. At

the hearing, the evidence disclosed that Brunwasser had failed to comply with the Order of Court and he was, therefore, adjudged to be in civil contempt.[1]

The rule was therefore made absolute and respondent has appealed despite the fact that no sanctions have as yet been imposed for contempt, the Court having granted a period of time until September 23, 1977, to allow respondent to purge himself of contempt.[2]

The long and short of this matter is that respondent has willfully failed to comply with a decree of this Court and has, therefore, been adjudicated to be in civil contempt.

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[1] At the hearing, respondent Brunwasser moved for a jury trial since he believed that the matter was one of criminal contempt. The Court, on the record, disabused Brunwasser of that notion, indicating that the matter was one of civil contempt since its purpose was to coerce compliance with the Order of Court primarily for the benefit of the other party to the litigation. *Woods v. Dunlop, et al.*, 461 Pa. 35, 334 A.2d 619 (1975). Despite the language of the Notice of Appeal, the Court did not adjudicate Brunwasser to be in criminal contempt of Court.

[2] Despite the fact that respondent never moved for a supersedeas in connection with his appeal from the preliminary injunction decree, the Court at the contempt hearing offered to grant a supersedeas on certain conditions. See Rule of Appellate Procedure 1733(a). This offer was refused by respondent, but the Court, nevertheless, indicated that respondent upon reconsideration might purge himself of contempt either by compliance with the preliminary injunction decree or by meeting the conditions set forth by the Court for the granting of a supersedeas.

THE SUPREME COURT OF PENNSYLVANIA
WESTERN DISTRICT

Sally Mrvos
Prothonotary
Irma T. Gardner
Deputy Prothonotary

801 City-County Building
Pittsburgh, Pa.
15219

September 9, 1977

Allen N. Brunwasser, Esquire
903 B Grant Bldg.
Pittsburgh, Pa. 15219

In Re: City of Pittsburgh, et al. v. Allen Brunwasser, Appellant, No. 216 March Term, 1977

Dear Mr. Brunwasser:

The Court has entered the following Order on your Petition for a Stay within the Meaning of Pa. R.A.P. 1732 and The King's Bench Power of the Supreme Court of Pennsylvania in the above matter:

"And now, this 9th day of September, 1977, the within petition for stay having been presented and the petitioner and counsel for respondents having been present and heard, and after consideration thereof,

IT IS HEREBY ORDERED that the petition for stay be and the same hereby is denied.

By the Court,
Pomeroy, J."

Very truly yours,
Irma T. Gardner
Deputy Prothonotary

ITG: ban
cc: D. R. Pellegrini, Esquire
Asst. City Solicitor
313 City-County Bldg.
Pittsburgh, Pa. 15219

IN THE COURT OF COMMON PLEAS OF
ALLEGHENY COUNTY, PENNSYLVANIA
CIVIL DIVISION

No. G.D. 76-28510
In Equity

CITY OF PITTSBURGH, a municipal corporation, and
JOSEPH L. COSETTI, Treasurer

v.

ALLEN N. BRUNWASSER

ORDER OF COURT

AND NOW, to-wit, this 23rd day of September, 1977, after hearing in open court, it appearing to the Court that on September 6, 1977, the Court adjudged respondent, Allen N. Brunwasser, to be in contempt of the Court's Order of June 8, 1977, and continued the imposition of sanctions to this date in order that respondent might have an opportunity to purge himself of contempt, and,

IT FURTHER appearing to the Court that respondent has failed and refused to purge himself of contempt and is still in willful noncompliance with the Order of this Court upon which the adjudication of contempt was predicated,

NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED that respondent Allen N. Brunwasser, be and he is hereby remanded to the custody of the Sheriff of Allegheny County to be transported forthwith to the Allegheny County Jail, there to remain until he shall purge himself of contempt by compliance with the Order of this Court.

BY THE COURT,
(s) Wekselman,
J.

IN THE
COMMONWEALTH COURT OF PENNSYLVANIA

No. 19 T.D. 1977

CITY OF PITTSBURGH, a municipal corporation et al.

v.

ALLEN BRUNWASSER,

Appellant

No. 1917 C.D. 1977

ALLEN N. BRUNWASSER,

Appellant

v.

CITY OF PITTSBURGH, a municipal corporation, and JOSEPH L. COSETTI, Treasurer,

Appellees

Before:

Honorable James C. Crumlish, Jr., Judge.
Honorable Glenn E. Mencer, Judge.
Honorable David W. Craig, Judge.

Argued: October 30, 1978.

Opinion by Judge Mencer, filed: January 26, 1979

On December 20, 1976, the City of Pittsburgh and its Treasurer, Joseph L. Cosetti (City) filed a complaint in equity in the Court of Common Pleas of Allegheny

County seeking to compel Allen N. Brunwasser, an attorney (Brunwasser) to file full and complete business privilege and earned income tax returns for the years 1971 through 1977 and to compel the payment of said taxes, together with penalties, interest, and costs.[1]

The taxes for which this suit was brought were levied pursuant to The Local Tax Enabling Act, Act of December 31, 1965, P.L. 1257, *as amended*, 53 P.S. §6901 et seq. The business privilege tax imposes a tax on the gross receipts received by business, professions, and other activities conducted within the City. The City's earned income tax levies a tax of one percent on the compensation received by residents of the City from earnings. Both taxes are self-assessing and require the filing of a return and the immediate payment of the tax. Instead of filing a completed return, Brunwasser filed a signed blank return alleging certain constitutional defenses.

On or about June 8, 1977, the court below issued a preliminary injunction granting a portion of the relief requested by the City. Brunwasser immediately appealed to the Superior Court, and the City's petition for the transfer of the appeal to this Court, on the basis that the Superior Court lacked jurisdiction, was granted.

After Brunwasser failed to comply with the decree of the court below, the City filed a rule to show cause why he should not be held in contempt. After hearing, answer, and time to comply, Brunwasser refused to comply and was incarcerated in the Allegheny County Jail until a

[1] The City also requested the trial court to compel Brunwasser to produce all books, records, and business materials necessary for the City to audit Brunwasser's returns.

stay was issued by the Supreme Court. Brunwasser appealed the finding of contempt to this Court, which appeal has been consolidated with the aforementioned appeal transferred to us by the Superior Court.

When reviewing a decision granting a preliminary injunction, that decision will not be disturbed if there exist any apparently reasonable grounds for the court's action. *Fantastic Plastic, Inc. v. Flaherty,* 26 Pa. Commonwealth Ct. 11, 361 A.2d 489 (1976). It is clear that courts have the inherent power to enforce compliance with their lawful orders through, as here, civil contempt. *In Re Martorano,* 464 Pa. 66, 346 A.2d 22 (1975). Where the court has jurisdiction over the subject matter and the parties and has the authority or power to render the particular order or decree, a party failing to abide by its terms may be held for contempt despite any error or irregularity in the order or decree, which must be obeyed so long as it is in effect and until it is dissolved by the court issuing it, or reversed on appeal. *School District v. Pittsburgh Federation of Teachers Local 400,* 31 Pa. Commonwealth Ct. 461, 376 A.2d 1021 (1977).

Guided by these principles and after a careful study of the record, we affirm the orders of the Court of Common Pleas of Allegheny County, Civil Division, on appeal here, on the unreported opinions of Judge Wekselman, dated June 6, 1977 and September 8, 1977 and filed to No. G.D. 76-28510, in equity.[2]

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[2] Brunwasser contends on these appeals that the trial court should be reversed because of the failure of the chancellor to disqualify himself as a result of bias in favor of the City. This issue was first raised by Brunwasser when he filed a motion to recuse in the trial court, which motion he subsequently withdrew with the explanation that he was so doing "so it [would] not be an appealable issue." In view of this withdrawal of the motion to recuse, we deem that Brunwasser has waived the issue of whether or not the chancellor should have recused himself. *See City of Pittsburgh v. DeWald,* 26 Pa. Commonwealth Ct. 151, 362 A.2d 1141 (1976).

Orders affirmed.

(s) Glenn E. Mencer
Glenn E. Mencer, *Judge*

[Caption Omitted]

ORDER

AND NOW, this 26th day of January, 1979, the orders of the Court of Common Pleas of Allegheny County entered in the above captioned cases, under date of June 8, 1977 and September 6, 1977, are hereby affirmed.

(s) Glenn E. Mencer
Glenn E. Mencer, *Judge*

Certified from the record Jan. 26, 1979.

Francis C. Barbush
Chief Clerk

Denial of Petition

THE SUPREME COURT OF PENNSYLVANIA
WESTERN DISTRICT

Sally Mrvos
Prothonotary
Irma T. Gardner
Deputy Prothonotary

801 City-County Building
Pittsburgh, Pa.
15219

August 16, 1979

Allen N. Brunwasser, Esq.
903B Grant Building
Pittsburgh, PA 15219

Re: Allen N. Brunwasser v. City of Pittsburgh, etc.
No. 1897 Allocatur Docket

Dear Mr. Brunwasser:

This is to advise you that your Petition for Allowance of Appeal in the above-captioned matter was denied by the Court on August 6, 1979.

Very truly yours,
(s) Sally Mrvos
Prothonotary

SM:ml
cc: D. R. Pellegrini, Esq.